

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES HARDY JR., # 157809,)	
Petitioner,)	
)	No. 1:14-cv-315
-v-)	
)	HONORABLE PAUL L. MALONEY
BONITA HOFFNER,)	
Respondent.)	
_____)	

**ORDER ADOPTING REPORT AND RECOMMENDATION, DENYING HABEAS
PETITION, AND DENYING A CERTIFICATE OF APPEALABILITY**

James Hardy Jr., incarcerated by the Michigan Department of Corrections, filed a habeas corpus petition under 28 U.S.C. § 2254. Hardy challenges his sentence for a 1995 conviction for first-degree retail fraud. The magistrate judge reviewed the petition and issued a report recommending the petition be denied. (ECF No. 4.) The magistrate judge concluded the petition was barred by the one-year statute of limitations. Hardy filed objections. (ECF No. 5.)

The Court has conducted a *de novo* review of the portions of the report to which Hardy has filed specific objections. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b), *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986) (per curiam). The Court finds the report accurately summarizes the procedural history and the relevant law. Hardy's objections do not undermine the magistrate judge's well-reasoned recommendations. In his objection, Hardy concedes that he did not file his federal habeas petition within one year of January 4, 2000. Hardy has not established any basis for tolling. He did not begin his state-collateral attack on his conviction and sentence until March 2009, well after the federal one-year time limit had run. Therefore, the Report and Recommendation (ECF No. 4) is **ADOPTED**, over objections, as the opinion of this Court. The petition for habeas relief is **DENIED**.

A district court must issue a certificate of appealability either at the time the petition for writ of habeas corpus is denied or upon the filing of a notice of appeal. *Castro v. United States*, 310 F.3d 900, 903 (6th Cir. 2002) (per curiam). A court may issue a certificate of appealability “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). See *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003). To satisfy this standard, the petitioner must show that “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Id.* (quoting *Slack v. McDaniel*, 529 U.S. 473, 483 (2000)). The Court has reviewed the record for the purpose of determining whether to issue a certificate of appealability. Reasonable jurists would not disagree with the Court’s resolution of the petition. Therefore, a certificate of appealability is **DENIED**.

IT IS SO ORDERED.

Date: May 2, 2014

/s/ Paul L. Maloney
Paul L. Maloney
Chief United States District Judge